UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

MARTIN MARIETTA MATERIALS, INC.,
Employer

and Case 25-RC-10039

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 103,
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on May 31, 2001, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Kentucky Avenue complex, its Noblesville Stone facility and its Noblesville Sand facility; BUT EXCLUDING all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

I. STATEMENT OF FACTS

The Employer, Martin Marietta Materials, Inc., is engaged in the mining and processing of aggregate. The Employer operates aggregate facilities in several states of the United States. The Indiana district includes 16 facilities, including one facility in Pana, Illinois. Three of these facilities are it issue herein; the Kentucky Avenue facility, Noblesville Stone facility and Noblesville Sand facility all located in Indiana. The two Noblesville facilities make up the Employer's Noblesville River Avenue complex. The Kentucky Avenue facility is located in Indianapolis, Indiana while the Noblesville facilities are located in Noblesville, Indiana. At both the Kentucky Avenue facility and Noblesville Stone facility, the Employer operates underground mines, mining and processing limestone products. In addition at Noblesville Sand, the Employer is engaged in the dredge mining of sand and gravel in an open pit operation.

The Petitioner seeks an election within a unit comprised of all production and maintenance employees who are employed at the Kentucky Avenue facility, the Noblesville Stone facility, and the Noblesville Sand facility. The Employer contends, however, that such a unit is inappropriate and that Kentucky Avenue constitutes a separate appropriate unit, with either Noblesville Sand and Noblesville Stone as additional separate units or combined into one unit. The unit found appropriate herein consists of the approximately 65 employees who are employed at the Kentucky Avenue facility, Noblesville Stone facility and Noblesville Sand facility.

The Employer and Petitioner have had a history of collective bargaining in a multi-facility unit for many years, since at least the 1980's. Such relationship is based on the Employer's pre-1960 voluntary recognition of the Petitioner as the representative of employees in certain facilities in the Indianapolis, Indiana area. This relationship has been embodied in a series of collective bargaining agreements, the most recent of which was effective from April 1, 1998 through March 31, 2001[1]. This multi-facility unit has changed somewhat through the years due to the depletion of resources at various mines and pits. The Kentucky Avenue facility, in some form or another, has been included in this multi-facility unit since at least the early 1980's. The Noblesville River Avenue complex was included in this unit beginning with the collective bargaining agreement effective April 1, 1989 through March 31, 1992. During this time the Employer operated only sand operations at the Noblesville complex. Both the Kentucky Avenue

[1] Following the expiration of the contract the bargaining unit employees of the three facilities commenced a strike on April 9, 2001. Such strike continued until April 19, 2001, at which time the bargaining unit made an unconditional offer to return.

facility and the Noblesville River Avenue complex have been included in the multi-facility unit in some form since 1989 and as presently constituted since 1998. In the most recent collective bargaining agreement, the bargaining unit is described as comprising the employees from the Kentucky Avenue complex, Noblesville Stone and Noblesville Sand. More specifically the bargaining unit is described in Section 1A of the collective bargaining agreement as follows:

> The Company and the Union recognize this Agreement as the sole and exclusive Agreement with respect to wages, rates of pay, hours of work, and other conditions of employment for all employees of the Company in the Bargaining Unit for classifications described in Schedule C, for the plants shown in Schedule A annexed to and made part of this Agreement, but excluding the Plant Clerks, Scalehouse Men, Weighmen, all other office clerical employees, Guards, Watchmen, other representatives of management and all supervisory personnel, as defined in the National Labor Relations Act, as amended.

The collective bargaining agreement contains Schedule A which indicates that the plants included in the bargaining unit are Kentucky Avenue Complex, Noblesville Sand and Noblesville Stone.

The Kentucky Avenue complex and the Noblesville River Avenue Complex are located approximately 30 miles apart. The Kentucky Avenue facility is managed by a plant manager, assistant plant manager, and three foremen. The production and maintenance employees at this facility hold such classifications as lead person, master mechanic, crusher operator, scaler operator, drill operator, powderperson, loader operator, plant operator, mechanic, welder, junior operator, off-highway truck driver, and roof bolter. The plant manager, Bob Purcell, reports to district production manager Mark DeGrove. DeGrove in turn reports directly to the vice president and general manager of the district, Bob Furlong.

The Noblesville Stone facility is managed by a plant manager and two foremen. The production and maintenance employees at this facility are employed in such classifications as lead person, master mechanic crusher operator, scaler operator, drill operator, powderperson, loader operator, plant operator, mechanic, welder, junior operator, and off highway truck driver. The plant manager, Kenny Parsons, reports to district production manager Dan Hoskins. Hoskins in turn reports directly to the vice president and general manager of the district, Bob Furlong.

The Noblesville Sand facility is managed solely by a plant manager. The production and maintenance employees at this facility hold such classifications as lead person, master mechanic, dragline operator, dredge operator, loader operator, plant operator, mechanic, welder, and junior operator. The plant manager, Larry Kilday, also reports to district production manager Dan Hoskins, who, as state above, reports to the district vice-president and general manager.

The production and maintenance employees' wages, hours, working conditions, and benefits for all three facilities are set by the collective bargaining agreement most recently in effect between the Employer and Petitioner. The employees all enjoy identical benefits. Pursuant to the collective bargaining agreement, the employees have no bidding rights to transfer

from one facility to another; however, under certain circumstances employees do move from one facility to another, i.e. plant closure and layoffs. Upon such transfer, the employees maintain their overall company seniority. The individual plant managers are primarily responsible for each facility's day-to-day operations, including hiring and minor discipline. Any discipline over and above a short suspension is handled by the district employee relations manager. The district employee relations manager handles any grievances at step two or above. In addition, the district employee relations manager provides input, when called upon, into hiring decisions.

As discussed above, both the Kentucky Avenue and Noblesville Stone facilities are engaged in the underground mining of limestone products, while Noblesville Sand is engaged in the surface mining of sand and gravel. Many customers of the Employer purchase materials from both the Kentucky Avenue complex and the Noblesville facilities. Generally the driving force determining which facility the customer uses is the location of the customer's jobsite. Customer's generally purchase materials from the Noblesville facilities to supply jobsites located in the suburban north to northeast side of Indianapolis and the Noblesville/Westfield areas. On the other hand, the same customer may purchase materials from the Kentucky Avenue facility to supply its jobsites located on the south and southwest side of Marion County, Indiana and the metropolitan Indianapolis area.

II. DISCUSSION

The Board has consistently held that it will not disturb an historical, multi-facility unit absent compelling circumstances. Met Electical, 331 NLRB No. 106 (2000); Pioneer Concrete, 327 NLRB 333 (1998); Trident Seafoods, Inc., 318 NLRB 738 (1995). The burden is on the party challenging the historical unit to show that such a unit is no longer appropriate. This evidentiary burden is a heavy one. Met Electrical, 331 NLRB No. 106 (2000); P.J. Dick Contracting, 290 NLRB 150, 151 (1988). It is clear from the language of the most recent collective bargaining agreement, discussed above, that it provided recognition of the Petitioner as the collective bargaining representative of the Employer's production and maintenance employees on a multi-facility basis. It is noted that the recognition clause of the agreement refers to the employees in the bargaining unit (singular form) and that the agreement provides for the signature of a representative from the Employer and not each of the individual facilities. The facilities comprising the parties' multi-facility unit have varied over the years due to the depletion of resources. This fact, however, does not mitigate a finding that the three facilities named herein constitute an historical multi-facility unit. The Board has consistently found that even a 1-year bargaining history on a multi-facility basis is sufficient to bar a petition seeking an election in a portion of the unit. See Arrow Uniform Rental, 300 NLRB 246 (1990). The record is clear that at the very least, the parties included all three of the petitioned for facilities in the most recent collective bargaining agreement which was effective April 1, 1998. Thus, the record demonstrates at least a three year bargaining history in the petitioned for unit . Nor does the fact that the unit was never certified by the Board lessen the weight placed by the Board on the history of bargaining in the multi-facility unit. Trident Seafoods, Inc., 318 NLRB 738 fn. 5 (1995).

Crown Zellerbach Corporation, 246 NLRB 202 (1979), cited by the Employer, is distinguishable from the instant case. In Crown Zellerbach the Board found a single facility unit appropriate despite bargaining history in a multi-facility unit because both parties to the historical bargaining relationship sought to disrupt the relationship and establish a single facility unit. In the instant case the Petitioner opposes the Employer's challenge to the historical multi-facility unit.

The Employer has relied on various factors in its challenge to the appropriateness of the historical multi-facility unit. The Employer contends that the employees at the three facilities do not share a community of interest based on their separate supervision, lack of interchange, and geographical separation. It is clear from the record however, that the employees of the three facilities do share a substantial number of factors in common, including similar terms and conditions of employment and they perform similar job duties and hold similar job classifications. In addition, there is some centralized control over labor relations at the district level and the working conditions do not differ from each location. The fact that the Kentucky Avenue facility is 30 miles from the Noblesville facilities does not indicate that a multi-facility unit is no longer appropriate. See Trident Seafoods, Inc., 318 NLRB 738 (1995) (Board found that a geographic distance of 750 miles did not overcome the significance of bargaining history in a multi-facility unit). The Employer also asserts that it is inappropriate to include only 3 of the 16 facilities in the Indiana district in the appropriate unit. The Employer specifically cites its Carmel Sand facility which is physically located between its Kentucky Avenue facility and the Noblesville facilities. In support of this contention the Employer cites Coplay Cement Company, 288 NLRB 66 (1988). In Coplay Cement both parties to the historical bargaining relationship, which consisted of two separate units, sought to bargain in a single multi-facility unit. Unlike the instant case, where only one party to the historical relationship seeks to challenge the appropriateness of the historical unit. Further, many of the other facilities mentioned by the Employer are separately represented, both in single facility and multi-facility units, by the Petitioner or other labor organizations. The existence of these other facilities are irrelevant because at no time were any of these facilities included in the historical unit. The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988). Thus, none of the factors asserted by the Employer, any differences between the employees of the three facilities, geographic distance, or the existence of other facilities in the area, constitute "compelling circumstances" that would warrant disturbing the parties' historical multi-facility unit.

Accordingly, as the Employer and Petitioner have enjoyed a long history of collective bargaining in a multi-facility unit, most recently including the employees located at the Kentucky Avenue facility, Noblesville Stone facility and Noblesville Sand facility, and the Employer not having shown any compelling circumstances which warrant disturbing such historical unit, it is concluded that the production and maintenance employees who are employed at the Employer's

Kentucky Avenue, Noblesville Stone, and Noblesville Sand facilities constitute a unit appropriate for purposes of collective bargaining[2].

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local 103

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

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[2] In light of the finding herein which upholds the parties' historical unit, the Employers motion to consolidate this case with Case 25-RD-1390, which seeks an election in a unit comprised solely of the Noblesville facilities, is denied.

V. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them, Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision, North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before June 19, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 26, 2001.

DATED AT Indianapolis, Indiana, this 12th day of June, 2001.

/s/ Roberto G. Chavarry
Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

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